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VIA HAND DELIVERY

Mr. K. David Waddell
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Generic Docket Addressing Rural Universal Service
Docket No. 00-00523

Dear Mr. Waddell:

Enclosed for filing, please find the original plus thirteen (13) copies of the Brief Submitted on Behalf of the Rural Independent Coalition in the referenced docket. Copies are being served on parties of record.

If you have any questions or concerns with regard to this filing, please do not hesitate to contact me.

Very truly yours,

**FARRIS, MATHEWS, BRANAN,
BOBANGO & HELLEN, P.L.C.**

Charles B. Welch
Charles B. Welch, Jr. *by J. T. W. [unclear]*

CBW:lw

Enclosures

POSTED
11-13-00

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:

GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE

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DOCKET NO. 00-00523

BRIEF OF THE RURAL INDEPENDENT COALITION

on behalf of

Ardmore Telephone Company, Inc.
Ben Lomand Rural Telephone Cooperative, Inc.
Bledsoe Telephone Cooperative
CenturyTel of Adamsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
DeKalb Telephone Cooperative, Inc.
Highland Telephone Cooperative, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
North Central Telephone Cooperative, Inc.
Peoples Telephone Company
Tellico Telephone Company, Inc.
Tennessee Telephone Company
Twin Lakes Telephone Cooperative Corporation
United Telephone Company
West Tennessee Telephone Company, Inc.
Yorkville Telephone Cooperative

"The Coalition of Small LECs and Cooperatives"

November 9, 2000

**Before the
Tennessee Regulatory Authority
Nashville, Tennessee**

IN RE:)	
)	
GENERIC DOCKET ADDRESSING)	DOCKET NO. 00-00523
RURAL UNIVERSAL SERVICE)	
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BRIEF OF THE RURAL INDEPENDENT COALITION

The Rural Independent Coalition (hereafter referred to as the “Coalition” or the “Independents”) respectfully files this Brief in response to the direction established by the Tennessee Regulatory Authority (“TRA” or “Authority”) at the Status Conference held in the above-referenced proceeding on October 31, 2000. The Coalition membership is comprised of 20 Independent telephone companies and cooperatives which collectively provide approximately 314,000 access lines to customers who reside and work within the more rural areas of Tennessee.

Introduction

The Authority has requested that the parties address three threshold issues:

- 1. Does the TRA have jurisdiction over the toll settlement arrangements between BellSouth and the Rural Local Exchange Carriers?**
- 2. Should the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?**
- 3. Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated companies, as such companies are defined under state law?**

Meaningful consideration and understanding of these issues, on both an individual and collective

basis, is vital to each of the Independents and their respective abilities to sustain and foster the provision of universal service in the rural areas of Tennessee. In their Comments filed in this proceeding on September 5, 2000, the Independents addressed both the short and long term adverse impact on universal service that would result from the arbitrary and isolated termination of settlement agreements between the Independents and BellSouth.

From a policy perspective, universal service concerns for rural Tennessee ratepayers mandates an affirmative response to each of the issues set forth by the TRA. The Authority and all participating parties are well aware that the opportunity to recover the costs of providing universal service in rural Tennessee has traditionally depended significantly on the contribution to cost recovery that each Independent receives from the division of intrastate intraLATA toll revenues with BellSouth. While the Independents and BellSouth historically entered into negotiated division of revenue settlement arrangements, the TRA (and its predecessor) held ultimate authority to be utilized if and when necessary to ensure that the public interest was fully served in the establishment of through rates among the connecting carriers.

Because of the historic dependence on settlements as an integral part of overall cost recovery for the rural Independents, the proposed withdrawal of the toll settlements and the resulting impact on universal service cannot be ignored. Accordingly, in their September 5, 2000, Comments the Independents offered a comprehensive state rate redesign and universal service plan that would appropriately incorporate consideration of BellSouth's proposed termination of the settlement agreements. In addition, the Independents asked the Authority to take emergency action to continue the existing settlement agreements pending the consideration of the Independents' universal service and rate redesign proposal in this proceeding. Absent action by the Authority or significant increases in rural Independent service rates, BellSouth's unilateral termination of the settlement agreements will severely impact the cash flow and

continuing operational viability of rural Independents.

Accordingly, and as more elaborately discussed in the Coalition's September 5, 2000 Comments, public policy interests require: 1) that the TRA holds authority over BellSouth's settlement arrangements for through rates for intraLATA toll service that has been provided by BellSouth and the Coalition Members; 2) consideration in this proceeding of the significant impact of BellSouth's proposed termination of the settlement agreements on the provision of universal service; and 3) application, as a matter of policy, of the state Universal Service statute to the rural rate of return regulated companies in order to meet the objective of universal service in rural Tennessee. These three threshold issues require an affirmative response, however, not only as a matter of public policy, but also as a matter of law, as discussed below.

Issue I: Does the TRA has jurisdiction over the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers?

The TRA has jurisdiction over the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers. Several sections of Title 65 of the Tennessee Code Annotated confer general jurisdiction upon the TRA. The TRA's jurisdiction over toll settlement arrangements, which are a historical form of universal service cost recovery, is especially certain in the context of revising the Tennessee Universal Service mechanism.

The TRA's jurisdiction over toll settlement arrangements is not, however, derived solely from its consideration of appropriate Universal Service mechanisms. TCA 65-5-201 provides in part that:

The [TRA] has the power . . . to fix just and reasonable individual rates, *joint rates*, tolls, fares, charges or schedules thereof, as well as commutation, mileage, and other special rates, which shall be imposed, observed, and followed thereafter by any public utility.

TCA 65-5-201. The authority to regulate joint rates necessarily includes authority over the division of those rates between or among the jointly providing carriers as well as authority over the facilities those carriers use to provide the service. The TRA's jurisdiction over toll settlement arrangements is further evidenced by the last sentence of TCA 65-5-201, which states:

In fixing such rates, joint rates, tolls, fares, charges or schedules, or commutation, mileage or other special rates, the [TRA] shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility.

An examination of the adequacy and efficiency of a jointly provided service necessarily includes an examination of the way the service is provided, the facilities used, and the compensation due each joint provider.

The Authority's jurisdiction over the settlement arrangements between BellSouth and the Independents is further demonstrated by the responsibility assigned to the TRA by the state Universal Service statutory provisions. TCA 65-5-207 grants the TRA broad authority to craft a new universal service mechanism designed for a competitive market. After stating its goal of the continuation of Universal Service to all residential customers and the continuation of carrier-of-last-resort obligations,¹ the Legislature mandated that the TRA investigate existing and alternative Universal Service mechanisms.² As part of this investigation, the TRA is to "determine all current sources of support for universal service and their associated amounts."³

Toll settlement arrangements have long been used as a means of recovering the cost of the operations of independent local exchange carriers (LECs) to ensure their continued provision

¹ TCA 65-5-207(a).

² TCA 65-5-207(b).

³ TCA 54-5-207(b).

of universal service and fulfilment of carrier-of-last-resort obligations. Thus, the TRA has jurisdiction over toll settlement arrangements.

TCA 65-5-207(c) explicitly supports this conclusion. It states in part that:

The [TRA] shall create an alternative universal service support mechanism that replaces current sources of universal service support only if it determines that the alternative will preserve universal service, protect consumer welfare, *be fair to all telecommunications service providers, and prevent the unwarranted subsidization of any telecommunications service provider's rates by consumers or by another telecommunications service provider.*

TCA 65-5-207(c) (emphasis added). The italicized text highlights two essential points. First, the Legislature believes that some “unwarranted subsidization” may exist in the current mechanisms utilized to achieve universal service. Second, the Legislature intends that the TRA must consider existing inter-carrier service arrangements in crafting a new universal service mechanism. As addressed by the Independents in their September 5, 2000 comments, access charge levels and toll settlements are the two primary sources of inter-carrier revenues for the Independents. Subsection (c) makes clear that the TRA must consider these toll settlement arrangements in revising the Tennessee Universal Service mechanism and to end those inter-carrier arrangements that it may deem unwarranted. Implicit in this charge to the TRA is the understanding of the Authority’s jurisdiction over the inter-carrier settlements.

The Legislature did not stop there, however. It went on in other portions of subsection (c) to further clarify its intent. Subsection (c)(5) provides for a rebalancing of rates to correct for the financial impact on a universal service provider of a change in the universal service support mechanism, such as the impact on the Coalition members of changes to their toll settlement arrangements with BellSouth. Subsection (c)(7) prohibits the TRA, however, from increasing rates for “interconnection services” as a part of rate rebalancing. Interconnection services are defined in TCA 65-4-101(f) as “telecommunications services, including intrastate

switched access service, that allows a telecommunications service provider to interconnect with the networks of all other telecommunications service providers.” According to TCA 65-4-101(c), “telecommunications service provider” includes incumbent local exchange carriers. Thus, toll arrangements between two incumbent LECs are included in the kinds of interconnection services over which the TRA has jurisdiction.

Even if the Legislature had not specifically contemplated TRA jurisdiction over the BellSouth settlement agreements with the Independents, the authority would, nonetheless, hold authority and responsibility for these arrangements. The very essence of the public utility nature of the intraLATA toll service provided by the Independents and BellSouth is precisely that which the Legislature has entrusted to the Authority. The TRA has “general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.” Thus, the TRA has jurisdiction over toll settlement arrangements to the extent necessary: 1) to regulate joint rates, including the adequacy and efficiency thereof, and the resulting settlement arrangements; and 2) to consider the toll settlement arrangements and proposed changes in the context of the Authority’s investigation of the existing Universal Service mechanisms and the implementation of new Universal Service mechanisms for the Coalition members.

Issue II: Should the withdrawal of toll settlements agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?

The withdrawal of toll settlements agreements between BellSouth and the Independents not only should, but must, be considered in the Rural Universal Service proceeding. As discussed regarding Issue I, the TRA is required to identify all current sources of universal

service funding and to determine the extent to which existing inter-carrier arrangements to support universal service should be continued.⁴ The toll settlement arrangements at issue precisely meet the Legislative mandate for consideration in this proceeding. Toll settlements are a historical form of Universal Service support to the Independents, and take the form of inter-carrier payments. In this regard, toll settlements and the rate levels established for intrastate access charges are similar traditional universal service mechanisms that have been established as integral parts of traditional rate and cost recovery design for rural carriers. The objective of the rate design and universal service cost recovery mechanisms have been to promote universal service connectivity to rural subscribers. In accordance with both the statute and sound public policy, changes in toll settlement arrangements must be considered in revising the Tennessee Universal Service mechanism together with consideration of other inter-carrier arrangements, including access charge levels.

With respect to the issue of how toll settlement arrangements should be considered in this proceeding, the Coalition respectfully suggests that the TRA's consideration should, consistent with the statutory requirements, focus on the following objectives:

- (1) Identifying toll settlements as a source of Universal Service cost recovery;
- (2) Determining whether, and to what extent, continuation of those toll settlement arrangements as a form of Universal Service cost recovery is warranted; and
- (3) Identifying an alternative form of Universal Service cost recovery mechanism to replace the Universal Service cost recovery provided by toll settlement arrangements if the TRA finds that continuation of those arrangements is not warranted.

The Independents have incorporated these objectives into the comprehensive state universal service and rate redesign plan set forth in their September 5, 2000 comments.

⁴ See TCA 65-5-207(b) and (c).

Issue III: Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated rural companies, as such companies are defined under state law?

From both a legal and policy perspective, the state Universal Service statute must apply to rate of return regulated rural companies. Consistent with both the state statute and the federal Telecommunications Act,⁵ principles and policies relating to the provision of universal service must be applicable to all local exchange carriers that are designated as providers of universal service. Accordingly, no provision of TCA 65-5-207 suggests that it applies only to a particular class of carrier on the basis of the way in which a carrier is regulated. Instead, the opposite is true. The first sentence of the statute expresses the Legislature's intent to preserve Universal Service to all residential customers and to continue carrier-of-last resort obligations.⁶ These goals cannot be achieved by applying universal service principles and policies only to carriers operating pursuant to a particular form of regulation (e.g., price regulation) and not to those operating pursuant to another (e.g., rate of return).

Further support for application of the Universal Service statute to all carriers can be found throughout the statute itself. Subsection (b) mandates that the TRA "determine all current sources of support for universal service," not just those for price-regulated companies. Similarly, subsection (c) requires fairness to "all telecommunications service providers." Subsection (8)(i) requires the TRA to consider the difference between the costs of providing

⁵ 47 USC § 254.

⁶ TCA 65-5-207(a).

services and the revenue received from providing services, including the cost associated with carrier-of-last-resort obligations, for both “high-density and low-density service areas.” The reference to “low-density service areas” is clearly a direct reference to rural areas, which tend to have low population density and low customer density, and are generally served by the Coalition members. Further, this language is an alternative way of saying “all service areas” in that the phrase “high-density and low-density service areas” may be read to include the whole universe of service areas, with high density service areas and low-density service areas being subsets of the whole.

TCA 65-5-207 applies on its face to all carriers, including rural rate-of-return carriers. Any other reading is contrary to the clear meaning of the statute and to the clear legislative goals stated therein. An interpretation that would exclude any rural incumbent universal service provider would not be competitively neutral, and accordingly, any such interpretation would constitute a violation of both the statute itself⁷ and federal law.⁸

Conclusion

The Independents respectfully recognize that the Authority has identified three threshold issues that must be addressed and answered expediently in order to go forward in this proceeding. In the absence of clarity in the resolution of these issues, the Independents are concerned that the efforts of the parties and the Authority to address universal service concerns in the areas of the state served by the Independents could be exposed to misfocused, distracting, and otherwise unnecessary debate. From the perspective of both policy and law: 1) the TRA clearly has jurisdiction over BellSouth’s settlement agreements with the Independents; 2) the toll

⁷ TCA 65-5-207(c)(4).

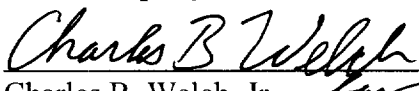
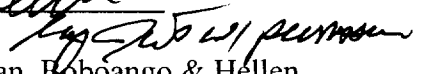
⁸ 47 U.S.C. § 254(f).

settlements must be considered in any meaningful review of state universal service policies for the rural service areas; and 3) the state Universal Service statute must apply to all Tennessee providers of universal service, including the rural rate of return carriers.

Universal service cost recovery for the Independents has historically been achieved through rate design and cost recovery that balanced basic service rates with toll settlement and access revenues. Any change in any aspect of the design will impact the provision of universal service. The Independents respectfully request that the Authority take immediate action necessary to ensure the continuation of the existing balance pending its consideration of the comprehensive proposal set forth by the Coalition.

Respectfully submitted,

**The Tennessee Rural Independent
Telephone Company Coalition**

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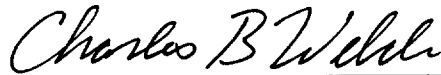
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